

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

11020 Sun Center Drive, #200, Rancho Cordova, California 95670-6114

PUBLIC HEARING

concerning

PROPOSED TECHNICAL AND MONITORING REPORT ORDER

R5-2010-xxxx

ISSUED TO

**HOMESTAKE MINING COMPANY; EMMA G. TREBILCOTT TRUST; ROBERT LEAL;
NBC LEASING, INC.; CAL SIERRA PROPERTIES; ROY WHITEAKER; GLADYS
WHITEAKER; DAVID G. BROWN; ROY TATE; AND MERCED GENERAL
CONSTRUCTION**

**THE WIDE AWAKE MERCURY MINE
COLUSA COUNTY**

On 7 October 2009, a panel of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), conducted an evidentiary hearing on a proposed cleanup and abatement order (Proposed CAO) for mercury in Sulphur Creek. The Proposed CAO required clean-up of the former Wide Awake Mercury Mine in Colusa County. A hearing panel must make a recommendation to the full Board, which then takes action based on the record. (Water Code section 13228.14.) The hearing panel has proposed a Technical and Monitoring Report Order under California Water Code section 13267 (Proposed Order), which constitutes the hearing panel's recommendation to the full Board. The Proposed Order requires investigation of mercury discharges and a well survey, but not immediate clean up or abatement.

The public hearing, which commenced on 7 October 2009, will continue during the Regional Board meeting which is scheduled as follows:

DATE: 26/27/28 May 2010
TIME: 8:30 a.m.
PLACE: Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

After an independent review of the record, the Central Valley Water Board may adopt, with or without revision, or reject, the proposed decision and order of the hearing panel.

The hearing panel's recommended changes to the Proposed CAO: (i) clarify the basis of liability for each discharger and add findings responding to all defenses asserted in the proceedings; (ii) clarify findings about the Basin Plan and beneficial uses; (iii) add a finding that the Board will take official notice that it has rained every year since 1954 in the vicinity of the Mines; (iv) modify the proposed Orders so that they are limited to requiring additional investigation and reporting, but not cleanup; (v) extend the due dates, which were based on a presumed 7 October 2009 effective date; (vi) add Roy

and Gladys Whiteaker as responsible parties; (vii) remove Glenn Mills from the Proposed Order, consistent with the Prosecution Team's presentation at the hearing; and (viii) require the Prosecution Team to complete its investigation of other responsible parties.

The Board may revise the hearing panel's Proposed Order. Accordingly, **the Central Valley Water Board could issue a cleanup and abatement order at the May 2010 hearing.** In such case, the Board's order would be substantially similar to the hearing panel's Proposed Order, except that the deleted references to Water Code section 13304 and cleanup requirements (shown in strikeout text in the Proposed Order) would not be deleted. Specifically, the following references to section 13304 or cleanup (or in the case of deleted findings, the entire finding) would be re-inserted: Order title; introductory paragraph; Finding 1, deleted Finding 29, Finding 34, deleted Finding 35 (following renumbered Finding 41); the reference to 14 Cal. Code of Regs. section 15330 in the CEQA finding; introductory paragraphs to Order requirements (the paragraph commencing with "It is hereby ordered", and the following paragraph); Order requirement 1; deleted requirements previously numbered 9-14 (all requirements under **Site Remediation**); renumbered Order requirement 9; deleted requirement 19; and the paragraph regarding issuance of a complaint and referral to the Attorney General. In addition, the following language would be stricken: the phrase "pursuant to CWC section 13267" from Finding 40; proposed new Findings 45-46; the following language in proposed new Finding 49: "However, this Order is limited to site investigation. Even assuming the Wenwest factors apply to site investigations,"; the following language from proposed new Finding 50: "Even if the secondary liability concept can be applied in the section 13267 context, it is not appropriate here."; and the last sentence of proposed new Finding 51 ("In accordance with this principle"). Finding 63 would be revised to state "investigation or cleanup" rather than "investigation" in line 3.

Designated parties or interested persons wishing to submit written comments to the Central Valley Water Board must submit them so they are received no later than **noon on 29 April 2010.** The Prosecution Team will post all timely written submittals on the website at http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml. Written materials received after noon on the above date will not be accepted and will not be incorporated into the administrative record absent a ruling by the Chair. A party requesting to submit late materials must demonstrate good cause for the late submission, and the Chair must find that the late submission would not prejudice the Central Valley Water Board or any designated party. **Comments must be limited to the changes to the Proposed CAO.** The Board will not accept new evidence, except as described below regarding rain data.

In addition, by 29 April 2010 the Prosecution Team shall submit a proposed deadline for completion of the investigation of other potentially responsible dischargers. (See new requirement 9.) Any other person may also comment on this issue.

All comments at the continued hearing will be limited to three minutes, unless the Chair provides additional time. Persons requesting extra time should submit the request in advance to Lori Okun and Ken Landau, with a copy to all other parties.

Please refer to the REVISED HEARING PROCEDURES (4 AUGUST 2009) regarding Hearing Participants, Primary Contacts, Separation of Functions and Ex Parte Communications. **Please note the following changes:**

- John Russell is no longer serving on the Prosecution Team.
- Assistant Executive Officer Rick Moss [916-464-4656, rmoss@waterboards.ca.gov] has been added to the Prosecution Team.
- The contact information for Merced General Construction, Inc. is: Kevin Garcia, President, 2370 West Cleveland Ave., PMB #123, Madera CA 93637, (209) 564-1550.

Anyone having procedural questions about matters that are not in controversy should contact Lori Okun, Senior Staff Counsel, at lokun@waterboards.ca.gov or (916) 341-5165. Interested parties may download the proposed Order and related documents from the Central Valley Water Board's Internet website at http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/. Copies of these documents can also be obtained by contacting or visiting the Regional Board's office at 11020 Sun Center Drive, #200, Rancho Cordova, California 95670, weekdays between 8:00 a.m. and 5:00 p.m.

The final meeting agenda will be available at http://www.waterboards.ca.gov/board_info/agendas/ at least ten days before the meeting. The agenda will provide the dates the Board meeting will be held, indicate the anticipated order of agenda items, and may include a Staff Report by the Advisory Team summarizing the item.

Rainfall Data

The Proposed Order includes a finding that the Board takes official notice that there are no years on record that it did not rain in the vicinity of the Mines. The California Department of Water Resources maintains an online data system called the California Data Exchange Center (CDEC), which includes precipitation data at sites throughout California. The following precipitation data sites were located in CDEC.

- Clear Lake Highlands (CLH) in Clear Lake Highlands, Lake County, monthly precipitation data from 10/1/1954 to present
- Whispering Pines (WSP) in Middletown, Lake County, with precipitation data from 1/1/1984 to present

The Clear Lake Highlands data set shows rainfall in Lake County since 1954 with the exceptions of two time periods when the CLH data set has no recorded data – winter 1985-86 and winter 2006-07. Note that the data set does not indicate that there was no rainfall during these time periods; the data set simply has no data for these time periods. The Whispering Pines daily incremental rainfall data for the period 9/1/2006 through 5/1/2007 shows that rainfall did occur in the area during winter 2006/2007. The Whispering Pines hourly incremental rainfall data for the period 10/1/1985 through 4/1/1986 shows that rainfall did occur in the area during winter 1985/1886.

Copies of this data will be included in the meeting agenda materials, or provided before that on request. Designated parties may submit objections to the finding regarding this data, or evidence to rebut the finding or CDEC data sets, by the **29 April 2010** (noon) due date, with a copy to all other designated parties.

The procedures governing Central Valley Water Board meetings may be found at Title 23, California Code of Regulations, Section 647 et seq. and are available upon request. Hearings before the Board are not conducted pursuant to Government Code section 11500 et seq. The procedures may be obtained by accessing http://www.waterboards.ca.gov/water_laws/. Information on meeting and hearing procedures is also available on the Board's website at http://www.waterboards.ca.gov/centralvalley/board_info/meetings/mtgprocd.shtml or by contacting any one of the Board's offices. Questions regarding such procedures should be directed to Ms. Kiran Lanfranchi-Rizzardi at (916) 464-4839.

The hearing facilities will be accessible to persons with disabilities. Individuals requiring special accommodations are requested to contact Ms. Kiran Lanfranchi-Rizzardi at (916) 464-4839 at least 5 working days prior to the meeting. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

Please bring the above information to the attention of anyone you know who would be interested in this matter.

original signed by

Kenneth D. Landau, Assistant Executive Officer
14 April 2010